Water Pollution Control Advisory Council (WPCAC) Meeting
June 21, 2001 9:30 a.m. – 12:00 p.m.
Room 111 Metcalf Building

Attendees

Council Members:
Richard Parks, Fishing Outfitters Association of MT
Barbara Butler, Billings Solid Waste Division
Roger Noble, Land and Water Consultants
Doug Parker, ASARCO

Other Attendees:
Bob Raisch, Department of Environmental Quality (DEQ)
John Arrigo, DEQ
Abe Horpestad, DEQ
George Algard, Dept. of Agriculture
Greg Ames, Dept. of Agriculture

Approval of Minutes

The WPCAP meeting was called to order by Chairman Richard Parks at 9:45 a.m. The Council approved of the minutes from the April 19, 2001 meeting.

Additions of Members to the Council

Bob Raisch passed out statute 75-5-221, regarding WPCAC in general.

Bob Raisch said Michael Kakulk, representing the MT Contractors Association, called and expressed an interest in getting a representative on the Council. The Council membership is established by statute 75-5-221. The MT Contractors Association may go to the next legislative session to add a member. In the interim, under 75-5-221(5), the director of DEQ may designate other persons to participate with the council members in evaluating particular issues arising under this chapter that are brought before the council. The MT Contractors Association main area of concern is stormwater permits regarding construction.

Richard Parks said that they would have to go through the legislature for a formal seat on the council. They may send someone to sit in on the meeting as a visitor. Eastern Montana is where the council needs representation if a new member is to be added. If stormwater permits come before the council, anyone who wishes to participate will be welcome.

Implementation of Proposed Amendments to the Water Quality Act (WQA) Penalty Rules

John Arrigo passed out draft revision of the rules.

John Arrigo said that under 75-5-605 it is unlawful to cause pollution or to place any waste where it will cause pollution to any state waters. If there is a spill in an intermittent drainage, in a place that can infiltrate into the groundwater, or in or near a stream it is considered a violation. It is also unlawful to violate any provision set forth in a permit. Another part of the law states that all violations are subject to penalties. Many violations of the WQA occur throughout Montana on a daily base. It is unreasonable to assess a penalty for all

of them and the minor violations that do not cause pollution or effect human health probably do not deserve a penalty.

Doug Parker asked if a penalty automatically means a monitory payment? Is there a reprimand penalty? Is there a definition of a penalty in the law?

John Arrigo answered that a penalty always means a monitory payment. There is no definition of a penalty in the law. An enforcement action is viewed to compel two things: one, a penalty to act as a deterrent to the violator and potential violators and two, an injunctive relief to allow the violator to take some kind of action. In the law there is separate penalty authority and injunctive relief authority.

Barb Butler asked if there is a definition for state waters regarding irrigation ditches?

John Arrigo said that state waters are defined in the law under statute 75-5-103(29), as a body of water, irrigation system or drainage system either surface or underground.

Barb Butler asked if the water going through a stormwater system operated by a municipality is considered state waters?

John Arrigo answered that it is because it discharges to state waters. The term does not apply to ponds or lagoons used solely for treating, transporting or impounding pollutants. It does not apply to irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

Barb Butler asked if it always stays state waters even when it is passing through underground stormwater systems?

John Arrigo said yes because the theory is that it could eventually get into the river.

The law also describes what the department has to do for an enforcement response. Under 75-5-617, whenever a person is found to be in violation, the department shall initiate an enforcement response. This includes issuing a 617 letter, issuing an order, bringing a judicial action or seeking penalties. Unless the violation represents an imminent threat the department will first issue a 617 letter. Under 75-5-611, the administrative penalty authority, when the department has reason to believe that a violation has occurred a written notice 611 letter may be served on the alleged violator. The letter must state the regulation violated, the facts, the nature of the corrective action and as applicable the amount of the administrative penalty that will be assessed if the corrective action is not taken. An exact penalty must be calculated and put in the letter but cannot be assessed if the violator complies with the corrective action. There are some violations that deserve to have a penalty assessed regardless if a corrective action was taken. A one day discharge violation that is gone down the stream cannot be corrected, so sending the violator a letter to correct the problem and not assessing a penalty does not make sense.

Doug Parker said that counter to that the department could go to the judicial penalty level. Asking for a corrective action on an individual spill basis could put in place a preventative measure to prevent a reoccurrence. This will still be accomplishing a major goal of enforcement to improve the situation. If the violation is grievous enough situation that a corrective action is not an adequate punishment, then a judicial action should be taken. The

judicial action is not desirable because of the burden it places on the department, but the administrative action is too easy on the violator.

John Arrigo said that it is not accurate to say that there is always some reasonable corrective action that can be done, some violations are human error, equipment failure or accidental spills. In many situations, especially with the major industries, the appropriate preventative measures and controls have been installed and approved by the department. It would be unreasonable to say that another level of additional preventative measures be installed.

Doug Parker said that there will always be the accidental spills but there are measures that can be taken to reduce the number of accidents. The department can ask the company to do an annual evaluation of all environmental monitoring systems.

John Arrigo said that some permit holders maybe doing that kind of evaluation already. It is unlawful to cause pollution, if a violator causes a significant amount of pollution a penalty should be assessed as a punitive measure. The department prefers the administrative route for the smaller types of violations because it is quicker, has less attorney time writing court documents and is easier on the violator so they do not have to hire an attorney. The major violations will go through the judicial procedure.

Doug Parker asked if there was an estimate of the difference in the department's administrative cost between assessing administrative penalties vs. judicial penalties?

John Arrigo said that the costs were being tracked through a computer database. As the system gets fully in place the numbers will be available.

Doug Parker said that if there is a big difference in cost between administrative and judicial penalties then an in-between administrative penalty authority that dealt with the 611 issue could be created. The legislature or the board could approve of an administrative penalty for a significant violation and use the third option to justify the departments' actions.

John Arrigo said that there are some authorities that bracket the limit of a penalty. For administrative penalties it is ten thousand dollars a day with a cap of a hundred thousand. For judicial penalties it is twenty-five thousand dollars a day with no cap. For other major environmental laws the penalties are in that range. For some of the reclamation laws, coal and open-cut, the penalty authority is a thousand dollars a day and the penalties average out low. It isn't worth the department's time to assess the penalties but they still have to process them. A possible solution to this situation hinges on the significance of the violation. Under 75-5-611(2), the department may issue an order in lieu of the notice letter if the department seeks an administrative penalty for an activity that it believes and alleges has violated 75-5-605. Essentially all violations of the WQA are 75-5-605 violations. This indicates that we do not need to send the 611 letter. 75-5-617 says that if it is not an eminent threat the department needs to send a 617 letter. In all situations a letter must be sent unless it is a normal violation. These two sections conflict with each other. When we drafted the administrative penalty rules that are currently in place, the interpretation was that both sections applied equally to a violation, which meant that a letter was always sent. If the violator complied with the letter, the department could not assess a penalty. This is how things are currently dealt with. There was a case against a feed lot in Hardin that had a failure in equipment that resulted in a serious spill. A letter was sent according to the law and because the company complied with it a penalty could not be assessed. When the department tried to assess a penalty the company appealed it

to the board. The board dismissed the order and directed the department to correct the situation.

The draft revisions to the WQA enforcement rules make a distinction between the 617 letter and the 611 letter. Under 17.30.2003 before initiating an action under paragraph (2) or (3), the department shall first issue a letter that meets the requirements of 75-5-617 unless it represents an imminent threat. The department may issue an administrative notice and an order if it does not involve a penalty or seeks an administrative penalty only for an activity that the department believes is violating 75-5-605. This retains the language that indicates that the department does not have to send a letter if it is a 75-5-605 violation. In other cases not described in paragraph (2) the department shall, before issuing an administrative order under 75-5-611 issue a notice letter. This is for violations other than 75-5-605 violations. The department may not assess a penalty for a violation cited in the notice letter issued pursuant to paragraph (3). This allows a violator to comply with the letter and not have a penalty assessed.

In the rules we may be able to set up a three-tiered scenario instead of saying it is a 75-5-605 violation that does not need a letter. In this three-tiered scenario a significant 75-5-605 violation does not need a letter, for a normal 75-5-605 violation a letter with corrective actions will be sent and minor 75-5-605 violations will have no penalties. The guidance, based on existing rules, gives the staff some factors to consider the severity of the violation and if it deserves a penalty. Each section of the department has their own idea of significant violations therefore this guidance will bring in some consistency throughout the entire department. This guidance will also help determine under which law a penalty will be assessed and when to assess a penalty. The WQA is a strict liability law in that the department does not have to demonstrate that the violator had intent to violate the law. The department has a consolidated enforcement agreement with the Environmental Protection Agency (EPA) that covers how we enforce the WQA, Air Quality Act, Public Water Supply Law and the hazardous waste, asbestos, and tank laws. Following EPA's criteria all significant violations deserve a penalty. On this issue the department agrees with EPA in most cases. EPA retains the authority to take separate action in addition to the department's action. The department works closely with EPA to prevent double penalizing a violator. If the department does not feel there is a good case on a violation, the EPA will be asked if they wish to take an enforcement action. Enforcement is administered on a graduated scale where minor violations receive compliance assistance from the department, and significant violations get a penalty, a corrective action order or both. The WQA has many enforcement options that can be utilized but does not include information request orders. The department can ask EPA to issue an information request order when it is needed.

EPA has criteria for violations of permit effluent limits that promulgate federal regulations relating to technical review criteria (TRC) and divided the parameters into two groups: Group I contains conventional pollutants such as BOD, TSS, TDS and Group II contains non-conventional pollutants such as toxic metals, cyanide, chlorine, and organics. For Group I a significant violation occurs if the monthly average exceeds the permit limit by a factor of 1.4 or forty percent and occurs once in each two consecutive three-month periods. Once a violator exceeds the limits they are put on a list of potential enforcement action. For Group II a significant violation occurs if the monthly average exceeds a factor of 1.2 or twenty percent and occurs once in each two consecutive three-month periods. It is also a significant violation if the monthly average exceeds the permit limit by any amount four times in a six-month period. If it does not fall into these categories it is considered to be a minor violation.

For other type of permit violations there are definitions of different classes of violations in the penalty regulations. Class I is the most serious involving discharging without a permit, discharging in a quantity or quality not authorized in a permit, violation of a compliance plan or causes major harm to public health and the environment. Class II violations involve construction or modification of a facility without approval, failure to monitor or submit a plan,

placement of waste where it is likely to cause pollution, failure to pay a fee, or other violations that are not classified as Class I or Class III. Class III are minor violations involving failure to submit a report, exceeding the BOD, COD by a factor of 1.2, or exceed pH by a factor of .5 or less. There are also definitions of the extent and gravity of the violation in law. A violation is major if it has a high likelihood to exposing humans to significant pollution or deviates from the applicable requirements in terms of both degree and time. A violation is moderate if it has a high likelihood of exposing water but not humans to significant pollution or deviates from applicable requirements in terms of degree or time, not both. A violation is minor if it has a low likelihood of exposing humans and water to significant pollution or not a significant deviation in terms of degree or time. By comparing class designation with extent and gravity it is possible to determine which violations are significant and which are minor. There is also a gray area to accommodate those violations that may fall into either category and to allow discretion in judgment. A significant violation will receive a 617 letter as required and issue an administrative penalty order. A significant or minor violation in the gray area will receive a 611 letter to allow a violator to take corrective action without being assessed a penalty. A penalty will be assessed if no corrective action is taken. A minor violation will just receive a 617 letter notifying the violator of the violation.

The department may also decide to seek judicial or criminal penalties for significant violations. A judicial penalty will be assessed if the penalty is greater that a hundred thousand dollars. The department will also look to see if the violator has a history of violation, if the violation was committed knowingly or willfully, negligence was involved, it creates an exigency or the two-year statute of limitation timeframe is almost exceeded, and if factual or legal issues warrant judicial review. EPA has a five-year statute of limitation timeframe and may step in if the department does not resolve a case in the two years. The department will work with the Department of Justice, Local County Attorney or the EPA Criminal Investigation Division if they believe a criminal violation has occurred.

Doug Parker said under Class III, BOD violation limit is by twenty percent. Isn't EPA's Group I by forty percent? What is the reasoning between the difference in numbers?

John Arrigo said that the rules were passed and we tried to incorporate EPA's criteria in our guidance. A violation in the limit by twenty percent only designates which ones are in Class III, minor violations. If it exceeded the limits by forty percent it would be under Class I, significant violations.

Doug Parker asked if when sending a 611 letter for significant or minor violations, should it really be a 617/611 letter? This letter still fills the requirements for the 617 letter.

John Arrigo said that is should and the actual letter does say it fills the requirements for both letters. Any input about the rule changes or putting the guidance or parts of the guidance in rules will be considered. The guidance is good because it makes it clear to the public, regulated community and the department when a penalty will be assessed regarding the WQA. However, no other laws are defined in such details. The next step will be to go to the September board meeting and request permission to initiate rule making on the rule changes.

Roger Noble asked if the guidance is not to be included in the rules, where would the public find it?

John Arrigo answered that it would be included in the manual that describes the general steps that have to be taken for enforcement.

Roger Noble asked if this addressed ground waters also? If an entity detected benzene at one part per billion in a monitoring well, would this be considered pollution even if it were less than the drinking water standards?

John Arrigo said that this addresses all state waters. Pollution is defined in the WQA as exceeding a standard. Pollution means contamination or other alteration that exceeds that permitted by Montana Water Quality Standards. MCLs do not apply but a lot of the WQB7 standards are based on MCLs for groundwater. In that instant the entity would be guilty of degradation, which is a different violation of the standards.

Barb Butler said that guidance is often passed off as rules and regulations, when they are not. In many cases guidance is incorporated by references into rules and regulations. This creates a gray zone of rules and regulations since guidance has no legal standing. If this is going to be uses as or part of a rule or regulation then it needs to be passed as a rule or regulation.

John Arrigo said that a lot of the guidance's incorporated into rules and regulations are construction standards or operational procedures. This particular guidance is more for the department. This guidance does not compel the public to do anything. It is an explanation on how the department interprets the law to deal with violations. This does not effect the regulated community, create a defense or create any facts that the department can use against a violator.

Doug Parker said that it is possible to describe the significance determination and add only one page to the rules without going into that level of detail.

John Arrigo said that it was possible to work the EPA's TRC and the different significance levels into the rules. It could be boiled down to just the relevant information and added to the rules. It may limit the department's discretion by insisting that a significant violation will get a penalty without the opportunity to take corrective actions. It will increase the amount of penalties but make the WQA enforcement more sophisticated and mechanical.

Doug Parker said that it would take more consideration to determine all the pros and cons of putting the guidance into rules.

John Arrigo said that any changes to the penalty rules should all be done at one time. It would be reasonable to add more information in the rules on how the department is going to apply this interpretation.

Richard Parks said that it would not be advisable to go into too much detail in the rules and lock the department into limited enforcement actions. It is impossible to cover every situation in the rules because the unexpected always arise. A window of discretion is needed to deal with the unexpected and unusual situations.

John Arrigo said that the department first has to decide if a penalty needs to be assessed. Once that has been decided there is a lot of subjectivity and negotiations that determine how much that penalty will be.

George Algard asked if the director has made a decision on what they are going to do about permits for irrigation management this summer regarding the pesticide application lawsuit?

John Arrigo said that the court ruling was that pesticide applications that enter waters needs a discharge permit. EPA has said that they are not going to follow that and the states should continue to allow pesticide applications. An individual may still have the opportunity to sue them.

George Algard said that the Department of Agriculture has requested some kind of statement from DEQ on where they stand. EPA has issued a statement on their position.

Bob Raisch said that the response letter is currently on its way to the Department of Agriculture. The department is going to continue to issue 308 authorizations for pesticide applications this summer.

Triennial Review of Montana's Water Quality Standards

Circular WQB7

Abe Horpestad passed out the current version of the Circular WQB7.

Abe Horpestad said that there are some changes to be made in this version as well. The third sentence of the first paragraph should not have "surface water quality standards, and the" stricken out. The seventh paragraph has some controversy about the use of "was" vs. "were". In the tenth paragraph, second sentence, the word "significance" was added after degradation, this should be removed. This copy only includes sections where changes have been proposed. There are sixty-two changes that are based upon a review done by the EPA. Some went up, some went down, some are strictly rounding errors and some make quite a difference when it comes to the magnitude of the number listed. EPA has modified the ammonia standard to be more lenient than before. EPA has just released a new cadmium number that went down by approximately a factor of ten to become more restrictive. The reasoning behind the change were recent toxicity tests that were done using other fish, including Bull Trout, which are more sensitive than most fish. There are twenty permits that have cadmium limits. ASARCO-East Helena, ASARCO-Mike Horse, Montana Rail Link-Livingston, Zortman, and Landuski all have limits above the new standard. The only ones that are likely to cause problems for the industries after mixing are those at Zortman, Landuski and ASARCO-East Helena. Montana Rail Link discharges are due to the fact cadmium is used as part of the coating on engine bearings. Particles get flushed out during oil changes, cleaning and rebuilding of the engines. The EPA will adopt the new standards for DEQ if DEQ does not adopt them.

Doug Parker asked if the board changes WQB7 is it a standard?

Abe Horpestad said that the standards are not effective until EPA approves of them for MPDES purposes or federal purposes but are state standards. There is much controversy over an industry being subject to two sets of standards.

Richard Parks said that it is only an issue if the state law is more lenient and not in compliance with a lower federal standard. If the state law is more restrictive that the federal standards it is not a problem as long as the permit holder is in compliance.

Doug Parker said that in the case of the ammonia where the standard is going up any municipal permits issued with the new standard would be out of compliance with the federal standards. Will the EPA come in and override the permit limits?

Abe Horpestad said that is was unlikely EPA would intervene since the numbers are being changed to match theirs. Many of the numbers changed are organic compounds, most of which are unlikely be to be present in Montana. The change for iron was under the category where it says "Harmful (aquatic life), Narrative. "Narrative" was removed and considered unnecessary because of footnote number twenty-three. There is a difference between harmful and narrative parameters in regards to non-degradation. Narrative in non-degradation essentially means that limits can go to the standard before it becomes significant. Harmful means limits can only go to fifty percent of the standard before it becomes significant. The actual effects of these changes except for ammonia and cadmium will be very minor.

Doug Parker asked what are the changes between this version of the WQB7 and the one that was sent earlier in the mail?

Abe Horpestad said that acenaphthylene was 0.0028 under human health standards and it should be 210. Aldrin should stay at 1.5 under acute aquatic life standards. Hepatachlor Epoxide should stay 0.26 under acute aquatic life standards. In the footnote number six the information from "Standards for metals" to "Standard for organic parameters" should be included into footnote number nine. Under footnote seven the subheading "2B" should be "3". In Table 1 the third column should be "Salmonids Not Present". Under footnote number twelve the "The values displayed in the chart correspond to a total hardness of 100 mg/L" should be removed because some are a total hardness of 50 mg/L. Under footnote number twenty-eight the last word in the first sentence "indicted" is a misspelling and should be replaced with "listed". The other driver for these modifications is the Montana Agricultural Chemical Ground Water Protection Act, which requires that if a pesticide is detected in the ground water, standards have to be developed for it. It also specifies to use the MCLs to generate the standard. For tralkoxydim there is no MCL and the department had to go through the toxicologist in EPA Denver to get data to calculate a standard. In cases where there is no MCL the department will use some common assumptions. For health advisories, the reference dose is considered being the highest dose that will not cause an effect when a person drinks it for seventy years, weight one hundred and seventy pounds, drinks two liters a day and twenty percent of the exposure comes from the water.

Doug Parker asked if the WQB7 was going to be presented before the board in July?

Abe Horpestad said that the department is going to request authority to start in July. This will bring us to the board for final action in November.

Abe Horpestad said that EPA Denver requested the department to put a footnote in the WQB7 about methylmercury levels not exceeding a certain level in fish flesh. The major exposure of methylmercury to humans is through the consumption of fish. Since the WQB7 does not directly regulate the concentration of anything in fish, the department has declined this request. EPA is working to convert this number to a water quality based standard. However, where there may be very high concentration of methylmercury in the fish there may be no detectable levels in the water. Because of the biomagnification issues fish that eat other fish have higher concentrations than fish that live off of bugs. Methylmercury also bioaccumulates in fish becoming stored in the flesh as the fish gets older and never decreasing over time. Given that it depends on fish species and fish age it will be very difficult to do the conversion.

Richard Parks said that it would be simplest for the public receiving fishing licenses to be warned about keeping and eating fish above a certain size.

Abe Horpestad said that there is that kind of guidance on selective reservoirs indicating that it is not advisable to eat a certain amount of fish above a certain size. This may be where the regulation will have to take place.

Surface Water Quality Standards

Abe Horpestad passed out the newest version of the standards.

Abe Horpestad said that the legal unit has attempted to put the standards into the proper legal format. The standards are up on the department's web site but WQB7 is not included on the site. EPA has all of the standards for all of the states on their web site. In the current version WQB7 is incorporated by reference only in the definition section. Legal has said that this means it applies only on the definition section. The 17.30.502 New Rule I is an attempt to address that issue and make the incorporations by reference legally applicable to all sections of surface water quality standards. Under the classifications provision of the regulations the approximate longitudes and latitudes are being put in for some locations that are difficult to find. Under 17.30.608 it is clarified that subsection (h) only applies to the mainstems of the Flathead River. Under 17.30.611(4) the two-mile section of the Tongue River that was previously unclassified is now classified. Prairie Dog Coulee should be Prairie Dog Creek. In 17.30.621 it now states that "water quality is to be maintained". There are about half a dozen streams in eastern Montana that will need to be reclassified as result of the recent TMDL programs. Numerous grammatical and technical language changes have been made. The department will be soliciting comments from the public on any part of the surface ground water standards or classifications. These comments will not be included in this rulemaking but will be compiled and may be addressed in future rulemaking.

Water Quality standards for the rivers and streams impacted by coal bed methane (CBM) discharges will be developed soon. This water is high in salinity and very high in relative amount of sodium (SAR) concentrations. SAR is the sodium absorption ratio, which is the ratio of sodium to the sum of the calcium plus the magnesium. High values of SAR impact soils by breaking up clays and turning it to a slime, which plugs up the soil preventing water from percolating through the soil. It also makes the clay loose its cohesiveness facilitating erosion. The department is currently in the process of developing standards for SAR and salinity for the Powder, Little Powder and Tongue Rivers. The department has been working with Wyoming to develop interim criteria to govern for the next eighteen months until standards can be developed. The impacts are already occurring due to high SAR and salinity in the Little Powder River and may be occurring in the Powder River. The main problem on the Powder and Little Powder Rivers is that the irrigators use the water when it is good quality. Setting a maximum standard that should not be exceeded will not help the irrigators. Salinity in the Powder River ranges from a low of four hundred in terms of electrical conductivity to a high of three thousand. The average in the last ten years is fifteen hundred, which the irrigators may possibly be able to use. Public meetings will occur in the area sometime this fall.

Doug Parker asked if these standards would apply to the mainstems or to all tributaries?

Abe Horpestad said there would be standards for both. To complicate matters more some of the tributary streams have naturally low-grade water quality. A lot of the tributaries have spreader dike irrigation. In Wyoming CBM operators are currently building reservoirs in those coulees to dump their water into. The "good" water is trapped in the reservoirs and the CBM water goes to the irrigators. The same method may be used in Montana. Salinity levels in Montana are currently near or above the threshold for yield decreases in alfalfa production.

Richard Parks asked if the standards should be completed before the Environmental Impact Statement (EIS) is done? As it stands now the EIS will be done before the standards are completed.

Abe Horpestad said that unfortunately at this time that is true. In theory the standards should be done first, the TMDL and then the EIS. At the moment all three are running concurrently with no way to change it. The EIS is only a programmatic EIS and will be fairly general assessing cumulative basin wide effects. In order for discharge permits for CBM water to be issued it is very likely that a sight specific environmental assessment is going to be necessary. The first draft of the impact section should be done in the middle of July.

Roger Noble asked why and when mixing zones and nondegradation will be addressed at a later meeting?

Abe Horpestad said that Montana WQA and the Federal Clean Water Act say the standards shall be reviewed occasionally and in periods not to exceed three years and changes shall be made as necessary. A hearings examiner reviewed the boards responsibilities two years ago and said there should be a triennial review. This will allow the board to say that in a particular year this set of rules was reviewed in total.

Roger Noble said that under 17.30.502 definitions number thirteen the "zone of influence" should be the "zone of contribution".

Abe Horpestad said there was much controversy over it and he will bring it up again.

Outstanding Resource Waters

Abe Horpestad passed out sections of the law regarding outstanding resource waters.

Abe Horpestad said that outstanding resource waters means state surface waters located wholly within the boundaries of an area designated as a national park or wilderness area or those that have been classified by the board and approved by the legislature. The law states the if you have outstanding resource water there cannot be a new point source discharge permit for that water even if it is distilled water. There cannot be any degradation due to new or increased sources. There can be short term or temporary changes. There can be non-point source caused changes. There is a petition being organized for the Gallatin area to make it an outstanding resource water. Such a petition would have to meet the criteria requirements under 75-5-316 (3)(c). The board will review the petition and if granted an EIS will have to be prepared if there is any impact before it can be classified as an outstanding resource water. It will only be effective and used as the basis to turn down new permits when the legislature agrees with the classification.

Doug Parker asked what is the current interpretation on obtaining permits for waters that are upstream and can get into outstanding resource waters?

Abe Horpestad answered that it is still possible to obtain permits for these waters. There are also arguments about whether such waters are wholly within a national park or wilderness area. There are rivers that flow through national parks and wilderness areas.

Miscellaneous Issues

Bob Raisch said the next meeting is scheduled for August 23, 2001.

Richard Parks said that it would be best to have a conference call or not have a meeting at all. If it were necessary to have the meeting another date would be preferable.

Richard Parks adjourned the meeting at 12:00 p.m.